

WRITING THE STATE BUDGET

81st Legislature

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This report summarizes the steps in the state budget process and the constitutional, statutory, and procedural requirements guiding the Legislature as it considers state spending needs. It specifically discusses the format of the appropriations bills, legislative action in adopting the budget, constitutional limits on state spending, and the role of state entities other than the Legislature in the budget process, including fiscal reporting and oversight of state agency performance and budgets.

The budget cycle in brief

Writing a two-year budget is one of the main tasks the Texas Legislature performs. During the 2009 regular session, the 81st Legislature will consider a budget for fiscal 2010-11, the two-year period (“biennium”) from September 1, 2009, through August 31, 2011.

Although Texas law designates the governor as the state’s chief budget officer, the Legislature traditionally has dominated the budget process. The Legislative Budget Board (LBB) is charged with preparing the budget and evaluating agencies’ financial performance. Both the LBB and the governor develop budget recommendations and must submit budget proposals to the Legislature. The Legislature develops and adopts the budget.

Since the early 1990s, the state has developed biennial budgets through a form of performance budgeting based on strategic planning. The governor initiates this process by outlining the government’s mission, goals, and priorities. Each state agency then develops strategies for accomplishing its goals and submits a budget request to implement its strategic plan. The Legislature determines the agency’s biennial funding after considering performance measures to gauge the agency’s success in meeting its goals.

In recent sessions, the Legislature has adjusted each agency’s funding in relation to its current funding levels. One exception was the 78th Legislature in 2003, when, in response to tight budget conditions, state leaders adopted an approach known as zero-based budgeting, a modified form of which was used during the 1970s and 1980s. Budget deliberations for each agency began at zero rather than current funding levels, and agencies were asked to identify and justify funding for essential services. The final budget represented an accumulation of essential service “building blocks,” up to an identified spending limit based on available general revenue at that time. The 79th and 80th Legislatures returned to the practice of adjusting funding based on current funding levels, and the 81st Legislature will continue this practice.

The LBB recommendations for the House and Senate general appropriations bills for fiscal 2010-11 adjust funding relative to the current biennium to continue most current services and fund projected population growth in Medicaid, CHIP, and education. The Senate recommendations also include a contingent appropriation to revise the system of care for individuals with developmental disabilities, an increase in the level of funding for public educator incentive pay, and funds to make permanent the Higher Education Performance Incentive Initiative. The House and the Senate will hold committee hearings at which agencies may justify their spending priorities and others may express their views.

Before each regular session begins, the comptroller of public accounts issues a constitutionally required estimate of revenue available for spending. On January 12, 2009, Comptroller Susan Combs estimated that the state will have available approximately \$167.7 billion from all revenue sources during fiscal 2010-11. The estimate includes \$77.1 billion in general revenue-related funds available for general-purpose spending, 10.5 percent less than the \$86.2 billion in general revenue-related funds that were available for fiscal 2008-09.

For an appropriations bill to be valid, the comptroller must certify that the state will have enough revenue to cover the approved spending. Appropriations bills also must comply with certain constitutional spending limits.

The governor may veto any appropriations bill and may veto specific spending provisions, called line items, within the general appropriations bill. If the Legislature is still in session, it may override the governor’s line-item veto by a two-thirds majority of members present in each house.

Texas is one of 20 states that operate exclusively on a two-year rather than a one-year budget cycle. Between sessions, the LBB and the Governor’s Office monitor budget implementation and evaluate agencies’ success at attaining their goals. The governor and LBB may adjust appropriations under certain circumstances by using budget

execution authority. Other agencies, such as the State Auditor's Office, the Comptroller's Office, and legislative committees, also may review the financial performance, effectiveness, and efficiency of state agencies or programs.

The general appropriations bill

The general appropriations bills for fiscal 2010-11 will be the starting points for legislative action to prescribe agency spending and to alter state accounting, performance measures, and other budgetary provisions. The bills will set a baseline for each state agency and each category of spending. The Senate is expected to go first this session, so the final version of the bill would be SB1.

The LBB estimates the amount spent in fiscal 2008 and budgeted for fiscal 2009 at \$169.8 billion. The total includes about \$88.7 billion in general revenue funds and general revenue-dedicated funds.

LBB budget estimates. On January 20, 2009, LBB issued baseline budget estimates for the House and Senate budget bills reflecting appropriations necessary to continue most current services with increased funding to address population growth in Medicaid, CHIP, and education. The LBB Senate recommendations also would fund a contingent appropriation to revise the system of care for individuals with developmental disabilities, an increase in public education incentive pay programs, and making permanent the Higher Education Performance Incentive Initiative. Compared to the current biennium, the recommendations for the Senate appropriations bill would increase state spending from all sources by 1 percent, to \$171.5 billion, and would increase spending of general revenue funds and general revenue-dedicated funds by about 1.7 percent, to \$90.2 billion. The recommendations for the House appropriations bill would include \$740 million less in all funds and \$452 million less in general revenue funds and general revenue-dedicated funds than the Senate recommendations (*see the House and Senate versions of LBB's Summary of Legislative Budget Estimates, January 2009*).

Budget format. Art. 3, sec. 35 of the Texas Constitution limits bills to one subject, except for general appropriations bills, which can include various subjects and accounts. However, this provision has been interpreted as prohibiting the general appropriations bill from changing substantive law. House Rule 8, sec. 4 reflects this interpretation and explicitly prohibits changes in general

law in an appropriations bill. In other words, appropriations bills deal only with spending.

Articles. For fiscal 2010-11, the LBB recommendations for the budget act retain the basic structure of previous budget acts, with 10 articles for agency budgets.

Articles 1 through 8 cover state agency budgets by functional category. For example, Article 3 covers agencies of public and higher education. Article 9 contains general provisions and directions to state agencies, the state salary classification schedule, and contingency appropriations and reductions. Article 10 contains appropriations for the Legislature.

The appropriations bills voted out of committee in previous sessions generally have included at least three additional articles. Article 11 listed agencies' exceptional items or "wish lists." Article 12 was the savings clause, stating that if any part of the act was held invalid, the remaining portions of the act would not be affected. Article 13 contained an emergency clause stating that the bill would take effect upon enactment.

Listed at the end of each article are summary appropriations for employee retirement contributions, group health benefits, social security and benefit replacement pay, and lease payments for buildings financed through the Texas Public Finance Authority. Also shown are recapitulations ("recaps") of total spending by article and by type of fund.

Agency budget configuration. Each agency's budget first describes the *method of financing* or mix of revenue sources that finances the agency's appropriation, including interagency contracts.

This information is followed by the number of full-time equivalent (FTE) employee positions authorized by the Legislature and a schedule of exempt positions, specifying the salaries of certain employees not covered by the state employee salary classification schedule. FTE authorizations serve as a cap on agency staffing.

Appropriations for each agency's budget are described in components that link funding to the agency's strategic plan, which is expressed in terms of goals and strategies.

Agency goals are general statements of the agency's long-range purposes. They provide the framework for expressing specific strategies, which state how an agency

Figure 1

COMMISSION ON THE ARTS

	For the Years Ending	
	August 31, 2008	August 31, 2009
Items of Appropriation:		
A. Goal: ARTS AND CULTURAL GRANTS		
Provide and Support Arts and Cultural Grants.		
A.1.1. Strategy: ARTS ORGANIZATION GRANTS	\$ 2,477,805	\$ 2,339,971
A.1.2. Strategy: ARTS EDUCATION GRANTS	\$ 1,060,536	\$ 888,228
A.1.3. Strategy: DIRECT ADMINISTRATION	\$ 698,958	\$ 698,958
Total, Goal A: ARTS AND CULTURAL GRANTS	\$ 4,237,299	\$ 3,927,157

Figure 2

1. **Performance Measure Targets.** The following is a listing of the key performance target levels for the Commission on the Arts. It is the intent of the Legislature that appropriations made by this Act be utilized in the most efficient and effective manner possible to achieve the intended mission of the Commission on the Arts. In order to achieve the objectives and service standards established by this Act, the Commission on the Arts shall make every effort to attain the following designated key performance target levels associated with each item of appropriation.

	2008	2009
A. Goal: ARTS AND CULTURAL GRANTS		
Outcome (Results/Impact):		
Percentage of Assistance Dollars Provided to Applications from Minority Organizations	20%	20%
Percentage of Assistance Dollars Provided to Applications from Rural and Geographically Isolated Communities	35%	35%
Percentage of Grants Funded That Are for Arts Education Programs	16%	16%
A.1.1. Strategy: ARTS ORGANIZATION GRANTS		
Output (Volume):		
Number of Funded Applications from Rural and Geographically Isolated Communities	550	550
Number of Funded Applications from Minority Organizations	300	300
Efficiencies:		
Average Grant Amount Awarded to Arts and Cultural Organizations	3,000	3,000
A.1.2. Strategy: ARTS EDUCATION GRANTS		
Efficiencies:		
Average Grant Amount Awarded for Arts Education Programs	2,600	2,600

intends to achieve its goals and objectives. Each goal also is associated with specific outcome measures that assess the impact of the agency's actions on the public.

Strategies, sometimes called line items, are the bases for appropriating money to an agency, and the appropriation may support more than one division or program in the agency. The agency may need more than one strategy to accomplish each objective. Strategies also are linked to specific output and efficiency measures. Output measures gauge the quantity of a service provided or a good produced. Efficiency measures gauge the cost or time taken per unit of output.

The examples on [page 5](#) illustrate the format for two portions of the fiscal 2008-09 appropriation for the Commission on the Arts. Figure 1 expresses one set of goals and strategies in terms of funds appropriated, and Figure 2 illustrates the performance measure targets for the same set of objectives.

A *rider* sets conditions on an appropriation. Some riders express detailed instructions specific to a particular agency's operations. For example, the Texas Parks and Wildlife Department's fiscal 2008-09 budget includes Rider 13, which directs the agency to use part of the appropriation for two specific strategies, Local Park Grants and Boating Access and Other Grants, to fund local grants to develop indoor recreation facilities. Riders also are used to set out an agency's capital budget, listing all capital expenditures and their method of finance, or to break down agency funding by goals and strategies and performance measures.

Some riders contain *contingent appropriations*, measures that would appropriate money only if the Legislature enacted other specific bills. These riders reflect other legislation moving through the legislative process. For example, provisions for agencies going through Sunset review usually include a rider making all appropriations contingent on the enactment of sunset legislation to continue the agency.

The budget may report an agency's *administrative appropriations* as:

- part of a strategy's funding. Administrative costs such as salaries and capital expenditures that are related directly to implementing a strategy are allocated to the strategy's funding level.

- a budget goal called *Indirect Administration*. Agencies receive appropriations of Indirect Administration funds to cover general overhead costs, such as for computers, administration, and support services, that cannot be attributed to specific programs. Indirect administrative budgets are itemized as the last goal in an agency's budget pattern and usually are found in the budgets of medium-sized and large agencies. Agencies without an Indirect Administration goal have indirect costs allocated to each strategy's funding.
- an informational item at the end of the budget called *Other Direct and Indirect Costs Appropriated Elsewhere in this Act*. This item identifies expenditures that are costs in performing agency operations but are not appropriated directly to the agency. For example, employee health-benefit contributions are appropriated to the state Employees Retirement System, not through the individual agency budgets. The amount reported for this item is *in addition* to the amount budgeted for the agency as reported in the grand total. Usually this item appears in the budgets of agencies that are required to support all their operations through revenues they collect.
- a rider called *Appropriations Limited to Revenue Collections*. This contingent rider requires an agency to pay for specific programs or costs, including administrative costs, with specific revenues such as fees or fines. It also authorizes the LBB to direct the comptroller to reduce appropriations to the amount of revenue expected to be available in the event that actual revenue collections are insufficient to cover costs.

Some agencies' budgets contain only one or two of the above, while others contain all four. At the end of each article is a recapitulation of appropriations for employee benefits.

Initial budget development

The Governor's Office and LBB work jointly in issuing instructions to state agencies for strategic planning and appropriations and in holding pre-session budget hearings. Government Code, ch. 2056 governs state strategic planning.

The LBB is a 10-member joint House and Senate committee established in 1949 (Government Code, ch. 322). The lieutenant governor and House speaker serve as co-chairs. Other members include the chairs of the House Appropriations and Ways and Means committees and the Senate Finance Committee. The speaker appoints two additional members from the House, and the lieutenant governor appoints three from the Senate for terms expiring when the next regular session of the Legislature convenes.

Pre-session budget instructions and hearings. In May 2008, the directors of the LBB and the Governor's Office of Budget, Planning and Policy instructed state agencies to submit budget requests for fiscal 2010-11 containing two components: a "baseline" request to fund ongoing operations and a list of "exceptional" items above the baseline level. For fiscal 2010-11, agencies were instructed to limit their baseline requests to the amount spent in fiscal 2008 and budgeted in fiscal 2009, plus the amount needed to cover in future years the 2-percent pay raise authorized for state employees in 2008. Agencies also were required to submit a plan showing how they would reduce their baseline requests by 10 percent.

Agencies were instructed to request funding in excess of the baseline request limitation only if it were necessary to:

- maintain public education funding;
- satisfy debt service requirements for existing bond obligations;
- maintain caseloads for federal entitlement services;
- satisfy employer contribution requirements for state pension systems; or
- maintain adult prison populations.

Agencies could request funding above the fiscal 2008-09 baseline level for exceptional items, which may include current services that would require funding above the baseline limit or new programs and services. In previous sessions, these items formed the basis of agency "wish lists" and were a primary subject of consideration during the legislative budget process.

Deadlines for receipt of agencies' budget requests, known as Legislative Appropriations Requests (LARs), were set for August 2008. The LBB and governor's budget staffs held joint hearings during August, September, and October for agencies to explain their requests, provide supporting data, and answer questions not addressed in the LARs.

State law requires the governor to hold budget hearings with an opportunity for testimony by agencies and the public (Government Code, secs. 401.043 and 401.044). Such hearings are optional for the LBB (Government Code, sec. 322.010). The governor and LBB may cooperate, exchange information, and hold joint public budget hearings. These hearings are the first opportunity for public testimony regarding future agency and program funding.

LBB budget submission. Government Code, sec. 322.008 requires the LBB to send copies of an estimated state budget to the governor and each member of the Legislature within the first five days of a regular session. This document, called *Legislative Budget Estimates*, includes agency-by-agency figures for funds spent or budgeted in previous years, the budget amount requested by each agency, the amount recommended by LBB, and methods of financing. The document also indicates the number of FTE positions targeted for each agency and a schedule of salaries for exempt positions. LBB also must submit a budget in the form of a bill within seven days of the beginning of the regular session.

LBB must submit to the Legislature by the third Tuesday of the regular session a report evaluating the performance and efficiency of agency programs (Government Code, sec. 322.011). Recommendations cited in LBB's report *Texas State Government Effectiveness and Efficiency* often are incorporated into funding proposals. LBB issued this report for the 2009 regular session on January 20, 2009.

Governor's budget proposal. The governor must submit a budget before giving the State of the State address (Government Code, sec. 401.046) and may prepare a general appropriations bill by the 30th day of the session (February 11, 2009), or by the 20th day following inauguration if newly inaugurated (Government Code, sec. 316.009). Governors once traditionally submitted their own detailed budget proposals, but in recent years they have tended to submit either general outlines or no separate budget at all.

On January 27, 2009, Gov. Perry released his fiscal 2010-11 budget proposal. The governor adopted the LBB budget recommendations and detailed his 2010-11 budget priorities. The largest spending priorities in the governor's budget include appropriations for public and higher education initiatives, replenishing the Texas Enterprise

and Emerging Technology funds, contingency funding for natural disasters and other emergencies, and border security initiatives.

Growth rate adopted. Art. 8, sec. 22 of the Constitution caps spending of state tax revenue not dedicated by the Constitution to a particular purpose. The growth of spending from nondedicated tax revenue from one biennium to the next may not exceed the LBB's official estimate of the state's economic growth rate, defined as the growth in statewide personal income.

A majority vote of the members in each house can override this limit. The 80th Legislature in 2007 (in SCR 20 by Ogden) voted to exceed the spending limit for the fiscal 2008-09 biennium in order to fund the school property tax relief required by HB 1 by Chisum, enacted by the 79th Legislature in its third called session in 2006. This was the first time since the spending limit was adopted in 1978 that the Legislature had voted to exceed the cap. In addition to funds appropriated by the 80th Legislature in 2007 in the general and supplemental appropriations acts, HB 2 by Chisum appropriated \$14.2 billion to fund school district property tax rate reductions. LBB included these property tax relief funds in the calculation of nondedicated tax revenue for fiscal 2008-09.

On November 14, 2009, LBB adopted an estimated growth rate of 9.14 percent from fiscal 2008-09 to fiscal 2010-11. The preliminary estimate for the limit on appropriations from state tax revenue not dedicated by the Constitution totals \$79.7 billion for fiscal 2010-11, based on the LBB October estimate of nondedicated tax revenue for fiscal 2008-09 of \$73 billion. The spending cap is derived by multiplying the spending of nondedicated tax revenue in the current biennium by the projected growth rate:

$$\$73 \text{ billion} \times 1.0914 = \$79.7 \text{ billion}$$

The LBB is in the process of recalculating the estimate of nondedicated tax revenue for fiscal 2008-09 based on the comptroller's January 12, 2009, revenue estimate, and the new figure could change the spending cap, as could any emergency appropriations approved by the 81st Legislature for fiscal 2009.

LBB adopted the comptroller's growth-rate estimate from among five forecast sources that offered estimates ranging from 7.74 percent to 14.82 percent. The current

rate is the lowest economic growth rate ever adopted; the previous low was a rate of 11.12 percent in 1996. The highest growth rate, 33 percent, was adopted in 1980 after the spending limit first was enacted.

Comptroller reports. Art. 3, sec. 49a of the Constitution requires the comptroller to submit before a regular session statements disclosing the financial condition of the state at the close of the last fiscal period and estimates of the revenues and expenditures for the current fiscal year as well as anticipated revenue for the upcoming biennium.

On January 12, 2009, Comptroller Combs estimated total revenue available for spending during fiscal 2010-11 to be \$167.7 billion and estimated the amount of general revenue-related funds available for certification at \$77.1 billion. This includes a positive balance of \$2.1 billion at the end of fiscal 2009, after setting aside \$2.2 billion in oil and natural gas production tax revenues for the "rainy day" fund, as required by the Constitution (*see page 14*). See the comptroller's *Biennial Revenue Estimate, 2010-11* for a more complete description of the revenue estimates and projected economic outlook.

Government Code, sec. 403.013 requires the comptroller to report to the governor by the first Monday of each November the funds, revenues, and expenditures of the state. These end-of-year financial descriptions appear in the comptroller's *Annual Cash Report* and cover revenues and expenditures for funds held by the state treasury. The comptroller also must issue by the last day of February of each year an audited financial report of all state agencies, called the *Comprehensive Annual Financial Report* (CAFR). Unlike the cash report, the CAFR is prepared using generally accepted accounting principles and includes information on funds outside the state treasury, fixed assets, and additional statistical and economic data.

Legislative action

The House and the Senate usually take turns originating the general appropriations bill and chairing the budget conference committee. For the 81st regular session, the bill will originate in the Senate. Both houses work on the budget, and they hold hearings simultaneously.

During the 2007 session, the House Appropriations Committee reported HB 1 by Chisum, the general

appropriations bill for fiscal 2008-09, on March 21, 2007. After the bill passed the House on third reading on April 2, it was received by the Senate and referred to the Senate Finance Committee, which reported a substitute version on April 10. The Senate passed the bill as amended on April 12, a conference committee was appointed on April 25, and both houses adopted the committee report on May 27. Gov. Perry signed HB 1 on June 15.

House action. The House Appropriations Committee (HAC) has jurisdiction over appropriations bills. For the 2009 session, the HAC includes a chair, vice-chair, and 25 additional members. Up to one-half of the general HAC membership will be determined by seniority and one-half chosen directly by Speaker Joe Straus, the method used for determining the membership of other substantive committees. This method for appointing the HAC is similar to that used under Speaker Pete Laney from 1993 to 2003. Under Speaker Tom Craddick (2003-2009) and Speaker Gib Lewis (1983-1993), the speaker designated a member of each of the substantive committees as chair for budget and oversight for the agencies under the jurisdiction of each committee and named all of the budget and oversight chairs to the Appropriations Committee. House Rule 4, sec. 4(b) prohibits the chair of the Appropriations Committee from serving on another substantive committee.

During the 2007 session, Appropriations Committee Chairman Warren Chisum divided the HAC into six subcommittees — education, health and human services, criminal justice, regulatory, general government, and special issues. In addition, the HAC had a subcommittee on government efficiency and operations made up of members from the other subcommittees. Each subcommittee held public hearings and made recommendations on budget proposals for agencies under its jurisdiction, but the full committee made the final budget decisions during “mark-up.” The HAC began agency budget hearings on January 31, 2007, for the fiscal 2008-09 budget.

Time constraints. House Rule 8, sec. 21(g) requires the HAC to report the general appropriations bill to the House by the 90th day of the session, which for the 2009 session will be April 12. The HAC has met the 90th-day deadline in each of the previous eight sessions.

The general appropriations bill has priority over other bills that would appropriate money. Under House Rule 8, sec. 21(a), during the first 118 days of the session the speaker may not lay before the House any bill

appropriating money unless the general appropriations bill already has been enacted and the comptroller has certified it. The speaker is to withhold his signature from such bills. If the HAC does not meet its 90th-day reporting deadline, this rule is suspended. The 118th day of the 2009 session is May 10.

House Rule 8, secs. 21(b) and (f) further restrict consideration of specific appropriation bills. To ensure compliance with the constitutional limit on spending from state tax revenue not dedicated by the Constitution, no bill that appropriates such revenue may be considered before final approval of the general appropriations bill, and no bills may be considered that, when added to amounts previously appropriated, would exceed the limit.

Bills reducing taxes or providing payment for legislative expenses, judgments against the state, and emergency matters are not subject to the House appropriations restraints (House Rule 8, sec. 21(e)).

Distribution of the bill. A printed copy of the general appropriations bill reported by the HAC must be placed in the mailbox of each House member at least 168 hours (seven days) before it may be considered on second reading during a regular session. During a special session, 72 hours advance notice is required (House Rule 8, sec. 14(a-1)). Most other types of bills must be distributed to the members at least 36 hours before second-reading consideration in a regular session, 24 hours before in a special session.

The Calendars Committee must distribute to the mailbox of each House member the calendar on which the general appropriations bill will be considered on second reading at least 144 hours (six days) before the calendar is eligible for consideration (House Rule 6, sec. 16(a-1)).

Limit on amendments. The House Calendars Committee usually adopts a special rule limiting floor amendments to the appropriations bill to changes that do not affect the “bottom line.” The rule has required that any amendment adding or increasing an appropriation item must contain an equal or greater reduction in one or more other appropriation items. For a special rule proposed by the Calendars Committee concerning the general appropriations bill to take effect, House members must adopt it by a majority vote. A proposed rule cannot be amended.

Second-reading amendments must be filed at least 72 hours (three days) before the calendar on which the bill appears is eligible for consideration (House Rule 11, sec. 6(h)). The House usually considers many floor amendments before approving its version of the general appropriations bill.

Senate action. The Senate Finance Committee develops the Senate budget proposal. Like all standing committees, the Finance Committee is appointed by the lieutenant governor, who also names the chair and the vice chair. In the 2007 session, Chairman Steve Ogden of the Senate Finance Committee began agency budget hearings for the 2008-09 biennium in September 2006 and started budget hearings on SB 1 on January 29, 2007. Senate Finance did not hold pre-session agency budget hearings for the fiscal 2010-11 budget. Budget hearings historically have been conducted before the entire Senate Finance Committee, although in past sessions four workgroups have heard testimony on specific areas of the budget.

Unlike in the House, Senate action on the general appropriations bill tends to follow the same rules that apply to all other legislation before the Senate. Bills are placed on the daily calendar in the order in which the Senate receives the committee reports. Approval by two-thirds of the members present is required to suspend the regular order and bring the general appropriations bill to floor consideration. Unlike the House, the Senate Finance Committee version of the budget has passed the full Senate without floor amendments during the past five sessions.

Conference committee action. After the House and the Senate adopt their versions of the general appropriations bill, the speaker appoints five House members and the lieutenant governor appoints five senators to a conference committee. The committee usually includes the chairs of the House Appropriations and Senate Finance committees and four other members of each committee, although the rules do not limit who may be chosen.

House Rule 13, sec. 9(b) and Senate Rule 12.04 allow conferees to reconcile only points on which the House and Senate bills differ. They may not alter figures that are identical in both bills. If both bills include a spending item but differ on the amount, the conferees may not set the amount lower than the smaller amount in the two bills nor increase it above the larger amount. If an item appears in only one bill, the conferees may include or delete it. If they include it, they may reduce but not increase the amount originally included in the bill.

The conferees may include no item in the conference committee bill that does not appear in either the House or the Senate bill, with two exceptions. House Rule 13, sec. 9(b)(5) and Senate Rule 12.04(5) allow the conference committee to include money for purposes or programs authorized by bills that have been passed by at least one house or passed and sent to the governor.

The conference committee also may seek permission from the House and the Senate to make changes otherwise prohibited by the rules — “outside the bounds” — by means of a resolution specifying the changes. Adoption of the resolution requires a majority vote in each house (House Rule 13, sec. 9(f) and Senate Rule 12.08). In 2007, the House and Senate each adopted such resolutions (HR 2892 by Chisum and SR 1208 by Ogden) shortly before adopting the conference committee report. The House and Senate resolutions were identical and listed each exception to conference committee rules and the reason for the rule suspension.

House Rule 13, sec. 10 requires that the conference committee report on the general appropriations bill be distributed to members at least 24 hours before it may be considered. Senate Rule 12.09(a) requires that the conference committee report be laid out for 48 hours before being considered in a regular session, 24 hours before in a special session.

Action after final passage

Certification. After an appropriations bill is approved by each house and signed by the speaker and the lieutenant governor, it goes to the comptroller. Under Art. 3, sec. 49a of the Constitution, no appropriations bill may be considered enacted or sent to the governor for consideration until the comptroller certifies that the state will have enough revenue to cover the approved spending. Government Code, sec. 403.0131(a), added in 2003, requires the comptroller to complete certification of the appropriations act not later than the 10th day, excluding Sundays, after the date the act is reported enrolled by the house from which it originated.

Art. 3, sec. 49a allows appropriations in excess of anticipated revenues in cases of “emergency and imperative public necessity” with approval of four-fifths of the total membership of each house. Generally, however, the Legislature does not approve an appropriations bill unless the revenue necessary to pay for it is available.

A bill not certified is treated as if it never passed and is returned to the house from which it originated. If the Legislature is still in session when the comptroller returns the bill, the bill can be amended to conform with the comptroller's revenue estimate.

Governor's veto powers. Art. 4, sec. 14 of the Constitution authorizes the governor to veto line items in any spending bill that contains more than one item of appropriation. Gov. Perry used line-item vetoes to reduce the fiscal 2008-09 budget by \$639.5 million in general revenue and by \$646.5 million in all funds, of which \$154 million was allocated to 2009 group health insurance contributions for community college employees. General revenue has since been made available to cover the 2009 community college employee health benefits. Other line-item vetoes included an allocation of \$297.2 million in all funds for payment to the federal government of the state's share of certain Medicare prescription drug benefits and an appropriation of \$76.6 million related to the implementation of a data center services contract. The governor also vetoed certain appropriations for the Texas Department of Criminal Justice, special item appropriations for institutions of higher education, and contingency appropriations for 15 bills that did not pass and one that was vetoed.

While the Legislature is in session, the governor has 10 days (not counting Sundays) after receiving the appropriations bill to make line-item vetoes. If the governor fails to act within the 10 days, the bill becomes law. If the Legislature still is in session when the governor vetoes a line item, the bill is returned to the Legislature, which may override the veto if two-thirds of the members present in each house approve. The house where the bill originated votes first.

If the appropriations bill goes to the governor later than the 10th day (not counting Sundays) before the session ends, the governor has 20 days (counting Sundays) after the session ends to act. In this case, if the 81st Legislature's regular session lasts its full 140 days and ends on June 1, 2009, the veto deadline will be Sunday, June 21.

The Legislature must take all actions on a bill during the same session. Because the general appropriations bill usually receives final approval during the last few days of a session, the Legislature typically forfeits the chance to override any line-item vetoes. If the Legislature happens to be meeting in a subsequent special session when the governor vetoes line items from an appropriations bill

approved during the regular session, the Legislature cannot override the vetoes during the special session.

Veto-proof riders. Texas Constitution, Art. 4, sec. 14 states: "If any bill presented to the Governor contains several items of appropriations he may object to one or more of such items, and approve the other portion of the bill." But in a 1911 court case (*Fulmore v. Lane*, 140 S.W. 405), the Texas Supreme Court held that the governor generally may not veto a rider. A 1951 attorney general's opinion (V-1196) stated that the governor has no authority to veto a rider in an appropriations bill "unless it is in itself an 'item,' that is, a provision containing a specific appropriation of money." In a 1975 case, *Jessen Associates, Inc. v. Bullock*, 531 S.W.2d 593, the Texas Supreme Court sustained this view. If a rider is not an item of appropriation, the veto "is of no effect," but "if the language is intended to set aside funds for a specified purpose, it is an 'item of appropriation' and is therefore subject to veto by the Governor."

An example of an expenditure authorized by rider that is not technically an "item of appropriation" — and thus presumably veto-proof — appears on page V-26 of HB 1 by Chisum, the general appropriations act for fiscal 2008-09. Rider 63 in the budget for the Texas Department of Criminal Justice (TDCJ) states: "Out of funds appropriated above in Strategy A.1.2, Diversion Programs, \$6,500,000 in fiscal year 2008 and \$6,500,000 in fiscal year 2009 in discretionary grants shall be made to the Harris County Community Supervision and Corrections Department for the continued operations of the Harris County Community Corrections Facility." The rider language does not appropriate money; it merely stipulates how some of the total amount appropriated to TDCJ for diversion programs is to be spent. Thus, if the governor had wanted to veto the \$13 million for the Harris County probation facility, he would have had to veto the entire \$237.7 million for the biennium for TDCJ's Diversion Programs strategy.

Lump-sum appropriations. In the seven previous state budgets, each institution of higher education was funded through a single line item, or lump-sum appropriation, instead of through multiple-line appropriations for separate strategies. A breakdown of each institution's funding by goals, strategies, and other budget components was listed in the first rider, called "Informational Listing of Appropriated Funds."

Gov. Perry had previously criticized lump-sum appropriations and did so again in his proclamation

vetoing certain portions of HB 1, the fiscal 2008-09 general appropriations bill. He said: "I called for a clear, unambiguous appropriations format for all institutions and recommended ending lump sum funding. The adoption would have increased accountability to state budget writers, taxpayers and students seeking to address the cost of education at state colleges and universities. A new pattern would have made it easier for schools to identify statewide trends to justify requests for funding to address specific needs." In his State of the State address on February 6, 2007, Gov. Perry had advocated that higher education budgets be made more transparent by detailing spending in line items rather than listing entire budgets as one lump sum.

Advocates of lump-sum budgets maintain that they protect agency budgets from veto cuts, allow more flexibility for agencies to operate, and eliminate the need for the Legislature to "micromanage" or to anticipate many months in advance how much funding individual programs will require.

Effective date. A general appropriations bill usually takes effect immediately, as specified in the bill. Art. 3, sec. 39 of the Constitution says that other bills must be approved by at least two-thirds of the membership of each house in order to take effect sooner than 90 days after adjournment of the session in which they are enacted. A general appropriations bill, however, takes effect as soon as the governor signs it or allows it to become law without signing it (Art. 4, sec. 14). Nevertheless, the spending approved in a general appropriations act generally does not take effect until the start of the new fiscal biennium on September 1 following the regular session.

Other appropriations and adjustments

Supplemental appropriations. The Legislature may change the state budget after it has been approved. Because the regular session begins in January, with eight months remaining in the two-year budget period, agencies sometimes ask for supplemental appropriations to tide them over until the new budget period begins.

The 80th Legislature in 2007 authorized supplemental appropriations and reductions in appropriations for fiscal 2007 and supplemental appropriations for fiscal 2008-09 in HB 15 by Chisum. This supplemental appropriations act appropriated about \$456.2 million in general revenue and

\$1.8 billion in all funds, taking into account the governor's veto of \$76.6 million in general revenue related to the implementation of a data center services contract. Some outstanding supplemental appropriations needs may require the 81st Legislature to enact emergency appropriations and adjustments for fiscal 2009.

Appropriation reductions and adjustments. The Legislature may reduce appropriations during a two-year budget period. For example, appropriations made by the 71st Legislature in 1989 for fiscal 1990-91 were reduced by the 72nd Legislature in January 1991.

The Legislature also may adjust the budget in special sessions called by the governor. During the 79th Legislature's third called session in 2006, lawmakers enacted four bills that appropriated nearly \$4 billion in additional funds. The bulk of the money, \$3.9 billion, was allocated to the Texas Education Agency for property tax reductions and public education changes.

Budget execution authority. Government Code, ch. 317 allows the governor and LBB, acting jointly, to use budget execution authority to make certain changes in appropriations when the Legislature is not in regular or special session.

A budget execution order may prohibit an agency from spending funds, change the purpose for an appropriation, change the time that an appropriation is distributed to an agency, or transfer an appropriation from one agency to another. It cannot spend money that has not already been appropriated by the Legislature. An order may not withhold for more than 180 days money appropriated to any agency, reduce the salary of an elected state official or a board member appointed by the governor, or reduce appropriations to the Legislature or legislative agencies. An order may not extend beyond a two-year budget period. An order may be superseded by legislative action.

Either the governor or LBB may propose a budget execution order. The entity receiving the proposal may ratify, reject, or recommend changes in the proposal. If a proposal is adopted without change, it takes effect upon adoption. If the receiving entity changes a proposal by adopting a "contingent order," the proposing entity may approve or reject the changes. If one entity proposes a budget change and the other entity does not take action within 31 days after the change is published in the Texas Register, the change does not take effect.

No budget execution orders were adopted or proposed during the interim following the 2007 regular session. In August 2005, the governor proposed spending an additional \$295 million for school textbooks and higher minimum salaries for teachers, but the proposal died when the LBB did not act on it. In the interim following the 2003 regular session, two budget orders were executed.

Spending limits

Constitutional limits. Five major constitutional limits bear on the appropriations process.

Appropriation requirement. Under Art. 8, sec. 6 of the Constitution, no money may be drawn from the state treasury unless it has been appropriated by law. No appropriation may be made for longer than two years.

Budget growth limit. Art. 8, sec. 22 caps spending of state tax revenue not dedicated by the Constitution to a particular purpose. An example of dedicated revenue is motor-fuels tax revenue dedicated to highway and public education expenditures. Appropriations from that revenue source do not count toward the spending limit.

The rate of growth of spending from undedicated tax revenue may not exceed LBB's official estimate of the growth rate of the state's economy. A majority vote of the members of each house may override this spending limit. Government Code, ch. 316, subch. A specifies the procedure by which the LBB adopts the growth rate (*see the most recent growth rate, page 8*).

If LBB does not adopt a spending limit, the growth rate must be treated as zero, and the appropriation of undedicated tax revenue may not increase from the current level (Government Code, sec. 316.002(e)).

Prohibition against deficit spending. Art. 3, sec. 49a limits spending to the amount of revenue that the comptroller estimates will be available during the two-year budget period. The comptroller must certify that the state will have enough revenue to pay for the approved spending. The Legislature may override the provision if at least four-fifths of the members of each house approve.

Before the regular session begins in January, the comptroller must provide the Legislature with an estimate of the amount of state revenue projected to be available

for spending during the next two-year budget period. A supplemental estimate is required before any special session (*see the most recent revenue estimate, page 8*).

The comptroller is not bound by the initial revenue estimate and may revise it at any time. The only revenue estimate that applies in determining if the state budget has a deficit is the one made when the comptroller certifies the general appropriations bill. Once the comptroller certifies a general appropriations bill, that certification stands, even if the comptroller subsequently determines that revenues will not cover expenditures after all.

The state may end a fiscal biennium with an unanticipated deficit, but it must eliminate the deficit in the subsequent budget. There must be sufficient revenue for the upcoming biennium to cover both spending in the general appropriations bill and any deficit left over from the previous biennium (*see Attorney General Opinion JM-666, April 1, 1987*).

Limits on state debt. Art. 3, sec. 49 of the Constitution prohibits state borrowing except to "supply casual deficiencies of revenue," repel invasion, suppress insurrection, defend the state in war, or pay existing debt. Texas voters have amended this provision more than 20 times to authorize the issuance of general-obligation bonds backed by the state's full faith and credit. In 2007, voters authorized issuance of additional general-obligation bonds backed by the state's full faith and credit including:

- \$500 million for student loans;
- \$1 billion for capital projects for certain state agencies;
- \$5 billion for highway improvement projects;
- \$3 billion for cancer research; and
- \$250 million for water projects in economically distressed areas.

Voters amended Art. 3, sec. 49 in 1991 to allow creation of state debt through ballot propositions submitted to the voters by a two-thirds vote of each house of the Legislature without amending the Constitution itself for each new bond proposal. This provision has never been used.

Art. 3, sec. 49-j, approved by voters in November 1997, sets a limit on certain state debt. The Legislature may not authorize general-obligation or revenue bonds or large lease-purchase agreements designed to be repaid from

general revenue if the resulting annual debt service from general revenue would exceed 5 percent of the average amount of general revenue (excluding funds dedicated by the Constitution) over the preceding three fiscal years. The limitation does not include bonds backed by the full faith and credit of the state that are reasonably expected to be paid from other revenue sources and not draw on general revenue, unless repayment from general revenue actually is required.

At the end of fiscal 2008, debt service on outstanding debt payable from general revenue equaled about 1.3 percent of unrestricted general revenue, according to the Bond Review Board. The fiscal 2008 year-end ratio for outstanding debt was close to the 1.32 percent ratio calculated for fiscal 2007. The ratio of total authorized debt service (issued and unissued) to unrestricted general revenue was 4.09 percent at the end of fiscal 2008 — more than double the 1.82 percent ratio at the close of fiscal 2007.

Limit on child welfare spending. Art. 3, sec. 51-a limits state spending on assistance to needy children and their caretakers to no more than 1 percent of the total state budget. Federal matching funds and administrative expenses are not included under the spending cap.

According to the LBB, the welfare spending limit for fiscal 2008-09 is about \$1.7 billion. The current budget allocates \$134.2 million for grants for Temporary Assistance for Needy Families, about \$1.5 billion below the constitutional limit.

Dedicated revenues and funds. Legislative spending discretion also is restricted by constitutional or statutory dedications that earmark certain revenue sources for special purposes or by state compliance with court orders and federal requirements. According to LBB's *Fiscal Size-up, 2008-09 Biennium*, only about 17 percent of the general revenue funds and general revenue-dedicated funds appropriated for fiscal 2008-09 reflected totally discretionary spending by the Legislature.

Constitutional or statutory dedications consumed about 49 percent of all general revenue and general revenue-dedicated fund appropriations in fiscal 2008-09. For example, the Constitution dedicates three-fourths of all motor-fuels taxes to highway-related spending. The other fourth goes to the available school fund for distribution to public schools. About 22 percent of general revenue and

general revenue-dedicated fund spending was influenced or directed by federal laws, regulations, and court decisions, and about 12 percent was influenced by statutorily imposed funding formulas, according to the LBB.

In addition to general revenue restrictions, the state's \$167.8 billion total appropriation for fiscal 2008-09 included about \$51 billion in federal fund expenditures. Federal funds generally are granted for specific purposes or with restrictions on how states may spend these funds.

Fund consolidation. Since 1991, the Legislature has phased out restrictions on many dedicated revenue funds and has changed the methods of fund accounting. In the past, most dedicated revenue was held in separate "special funds," severely limiting the amount of general revenue available for general-purpose spending. The Legislature has phased in the consolidation of many dedicated funds into general revenue and has contained the growth of newly created dedicated accounts. The general revenue fund now contains about 200 dedicated accounts.

Government Code, sec. 403.095 requires that at the direction of the Legislature, the comptroller must reduce the balance in general revenue-dedicated accounts by the amount that exceeds appropriations from these accounts. Funds in general revenue-dedicated accounts that the comptroller estimates will be in excess of appropriations for the current biennium as of August 31, 2009, are included in the comptroller's estimate of funds available for general-purpose spending in fiscal 2010-11. Accounts exempt from this provision include accounts created by a court or the Constitution, trust funds, and funds outside the treasury.

Economic stabilization fund. A portion of any balance remaining in the general revenue fund at the end of a biennium is transferred to the economic stabilization fund, also known as the "rainy day" fund. The transfer is required both by statute and by Art. 3, sec. 49-g of the Constitution, approved by voters in 1988.

As of August 31, 2008, the fund had a net cash balance of about \$4.4 billion. The fund is held outside of general revenue, and its revenues and expenditures are summarized in the comptroller's 2008 *Annual Cash Report*.

By the 90th day of each fiscal biennium, the comptroller must transfer to the rainy day fund "one-half of any unencumbered positive balance of general revenues on the last day of the preceding biennium." Unencumbered

revenue has no constitutional or statutory restriction and has not been obligated to be spent in the future. The comptroller transferred \$1.8 billion in unencumbered revenue to the rainy day fund in November 2008. The only other such transfer occurred in November 1991; most biennia have concluded with no unencumbered general revenue balance.

The rainy day fund also has grown rapidly in recent years because of increased collections of oil and natural gas production taxes. Art. 3, sec. 49-g requires that the fund receive 75 percent of any oil or natural gas production tax revenue that exceeds the amount collected in fiscal 1987. The remaining 25 percent of the excess revenue goes to general revenue. Transfers of excess natural gas tax and oil production tax collections to the rainy day fund are projected to be \$2.2 billion in fiscal 2009, and the balance in the fund is expected to be \$6.7 billion at the end of fiscal 2009. If no appropriations are made from the rainy day fund in fiscal 2010-11, the comptroller estimates the fund balance at the end of the biennium would be \$9.1 billion.

The rainy day fund cannot exceed an amount equal to 10 percent of the total amount deposited into general revenue (minus certain types of income and funds) during the previous biennium. The cap may be higher than the general revenue estimate for a biennium because many funds, including federal funds, are first deposited in the general revenue fund before being transferred to other accounts. The cap for fiscal 2008-09 is roughly \$10.7 billion.

Money in the rainy day fund may be spent only with legislative approval. Subject to various limitations, approval by at least three-fifths of the members present in each house is required for any expenditure from the fund. Spending generally may not exceed the amount of any unanticipated deficit or revenue shortfall. However, any amount from the fund may be spent for any purpose if at least two-thirds of the members present in each house approve it. The supplemental appropriations bill enacted by the 79th Legislature in 2005, HB 10 by Pitts, appropriated approximately \$1.1 billion from the rainy day fund for fiscal 2005 and a further \$872 million for fiscal 2006-07. This \$1.9 billion, along with other funds, was used to finance appropriations in HB 10 for a number of budget areas, including Child Protective Services, Medicaid, CHIP, and public education. The 80th Legislature did not appropriate any rainy day funds for fiscal 2008-09.

Budget monitoring

Several state agencies and committees evaluate agency budget performance and major state finance issues.

LBB activities. In addition to assisting with the development and execution of the budget, the LBB staff monitors agency performance measures and expenditures, performs interim assignments directed by the general appropriations act, and responds to special requests from the board, legislators, and agencies.

After a regular session ends, the LBB summarizes the state budget and state government functions, activities, and agencies in its *Fiscal Size-up* report. The report also describes state revenues and major revenue issues and compares Texas with other states in terms of state expenditures, tax rates, personal income, number of government employees, and other factors.

All agencies must submit quarterly or semiannual reports to the LBB and the Governor's Office on their progress in meeting performance targets. Data submitted through these reports are verified by the State Auditor's Office (SAO) and serve as the primary tool for monitoring each agency's progress toward reaching its strategic goals and objectives. The LBB staff reports to the board major variances from stated goals. In July 2008, the LBB submitted to the 80th Legislature its report *Budget and Performance Assessments: State Agencies and Institutions*, which provides information on agencies' budgets, major contracts, employment levels, and success in meeting established performance targets.

LBB staff analyzes how state agencies and programs are financed, organized, and operated and recommends improvements that will streamline operations, eliminate duplication, save the state money, and enhance the delivery of services. On January 20, 2009, LBB released to the 81st Legislature its most recent recommendations to enhance the performance and efficiency of selected agency programs in the report *Texas State Government Effectiveness and Efficiency*. The Comptroller's Office formerly assessed agency performance and issued a report recommending changes designed to improve the operation of state government. The comptroller's staff also reviewed individual state agencies, school districts, and other units of local government. Both responsibilities were transferred from the Comptroller's Office to the LBB in HB 7 by

Swinford, enacted by the 78th Legislature in its third called session in 2003.

State Auditor's Office. SAO acts as an independent auditor of state government management and financial systems and offers audit-related information services for the Legislature. It operates under the direction of the Legislative Audit Committee (LAC), comprising the lieutenant governor, the House speaker, and the chairs of the Senate Finance Committee and the House Appropriations and Ways and Means committees as well as another member of the Senate appointed by the lieutenant governor. SAO assists in strategic planning and budgeting by assessing the use and appropriateness of agency performance measures. The agency also reviews and evaluates state salary classifications.

The state auditor also conducts management control audits and financial audits. Management control audits assess agency or program organization, management information systems, administrative controls, and other factors to determine whether resources are used efficiently and economically. Statewide financial audits are conducted to satisfy federal grant requirements and to determine the accuracy of state financial statements. Audits of individual agencies evaluate financial operations, certify financial statements, and determine compliance with specific laws. Internal auditors at the larger state agencies and universities also monitor the reliability of financial controls, the

accuracy of financial information, and the safeguarding of state property.

The state auditor and LAC annually select agencies or programs for audit through a risk-assessment process that considers such factors as budget size, history of program problems, and unmet performance measures. Audits are coordinated with LBB staff and the Sunset Advisory Commission (Government Code, sec. 321.013(c)).

Sunset Advisory Commission. The Texas Sunset Act (Government Code, ch. 325) requires the Legislature to evaluate all state agencies periodically and to abolish or "sunset" inefficient or unnecessary operations. The Sunset Advisory Commission reviews all agencies scheduled by law for termination in a given year, examining each agency's operational efficiency, conformity to its strategic plan and statutory objectives, and any duplication or overlapping jurisdictions with other agencies. Twenty-seven agencies and programs representing a broad range of governmental activities underwent Sunset review in preparation for the 2009 regular session.

The Sunset Advisory Commission includes 12 members: five senators and one public member appointed by the lieutenant governor, and five House members and one public member appointed by the speaker. The commission completed its recommendations for all 27 agencies and programs on January 14, 2009.

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